

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 11, 2000

IN RE:)	
)	
ALL TELEPHONE COMPANIES TARIFF)	DOCKET NO.
FILINGS REGARDING RECLASSIFICATION)	97-00409
OF PAY TELEPHONE SERVICE AS REQUIRED)	
BY FEDERAL COMMUNICATIONS COMMISSION)	
(FCC) DOCKET 96-128)	

**ORDER GRANTING IN PART AND DENYING IN PART
MOTION TO COMPEL AND TO MODIFY SCHEDULING ORDER**

This matter came before the Pre-Hearing Officer upon the filing of a *Motion to Compel and to Modify Scheduling Order* filed by the Consumer Advocate Division of the Office of the Attorney General and Reporter ("Consumer Advocate") on August 25, 2000. The relevant facts are as follows.

The Consumer Advocate filed a *Motion to Compel and to Modify Scheduling Order* on August 25, 2000. In the motion, the Consumer Advocate alleged that United Telephone-Southeast, Inc. ("United") had failed to adequately respond to the Consumer Advocate's data requests¹ and that such responses were necessary to the development of the Consumer Advocate's case.

The Tennessee Payphone Owners Association ("TPOA") filed a timely response. The TPOA supported the Consumer Advocate's motion. Specifically, the TPOA

¹ The Consumer Advocate tendered seven (7) data requests to United Telephone-Southeast, Inc.

suggested that the Pre-Hearing Officer require United to file a forward looking cost study on September 15, 2000.²

United filed its response to the Consumer Advocate's motion on September 5, 2000. United argued that the motion was vague in that it did not list the specific data requests at issue. United also noted that the Consumer Advocate had attached to its motion copies of United's responses to questions one³ and six⁴ only. Given the vagueness and attachments, United concluded in its response that the Consumer Advocate's motion applied only to requests one and six. As to the first request, United argued that the study requested by the Consumer Advocate could not be created. As to the sixth request, United argued that its response was sufficient. Finally, United argued that the Pre-Hearing Officer should deny that portion of the motion requesting the procedural schedule be modified because the Consumer Advocate did not explain "why or to what extent a modification is necessary."⁵

United filed its reply to the TPOA's response on September 6, 2000. In its reply, United submitted that the TPOA's suggestion requires the Pre-Hearing Officer to

² In an Order filed on July 21, 2000, the Pre-Hearing Officer set forth the procedural schedule. According to this schedule, the parties shall file proposed rates with detailed cost support and direct testimony on September 15, 2000. The methodology to be used was not determined at that time.

³ Request number one provides:

Please provide a revised study identifying the cost of providing payphone lines conforming to the decisions made by the Tennessee Regulatory Authority in the phase I order (5/20/98) and Phase II order (9/16/99) in Docket 97-00888 (Universal Service Proceeding), and Phase I order (1/25/99) in Docket 97-01262 (Petition to Convene a Contested Case Proceeding, to Establish Permanent Prices for Interconnections and Unbundled Network Elements.[sic] Provide detailed workpapers showing source of data and the development of all computed factors and amounts included in the study.

⁴ Request number six provides:

If it is United Telephone-Southeast, Inc.'s position that the methodology used for determining the costs of unbundled network elements is inappropriate for use in determining the cost of payphone access lines, provide a detailed explanation of the methodology that United Telephone-Southeast, believes is superior for determining the cost of each of the elements that make up the payphone access line and explain why United Telephone-Southeast's preferred methodology is superior.

⁵ *UTSE Response to CAD Motion to Compel and to Modify Scheduling Order* at p. 3.

determine which methodology should be used to calculate the pay telephone rate and that such a determination at this time is premature. The Consumer Advocate did not file a reply.

The Consumer Advocate filed its reply on September 8, 2000.⁶ The Consumer Advocate contended that United should be required to reply to the data requests because it failed to state sufficient cause under Rule 26.02 of the Tennessee Rules of Civil Procedure for limiting discovery. Further, the Consumer Advocate noted that United failed to request a protective order.

Based upon the filings, data requests, and responses thereto, the Pre-Hearing Officer is of the opinion that several issues are presented herein. First, it is necessary to determine the extent of the Consumer Advocate's motion as it relates to the seven data requests. Second, it is necessary to determine whether United has complied with the data requests at issue. Finally, the third issue is whether it is necessary to modify the procedural schedule.

United is correct in its assertion that the motion does not list specific data requests by number. Nevertheless, it is the opinion of the Pre-Hearing Officer that United's conclusion that the motion only applies to requests number one and six is incorrect. Rather, the Pre-Hearing Officer believes the plain language of the motion indicates that it applies to all seven data requests.⁷

⁶ The Pre-Hearing Officer sent out a notice requesting replies by September 6, 2000. Inadvertently, the notice was not sent to the Consumer Advocate.

⁷ As an aside, the Pre-Hearing Officer is of the opinion that United can not claim that it has not had an opportunity to address requests two through five and seven. United was given this opportunity and chose to only address issues one and six at its own peril.

Of the seven requests, the Pre-Hearing Officer finds that the motion should be granted as to requests number four and five. Requests number one, two, three, and seven,⁸ all relate to the provision of a cost study based on a UNE pricing, i.e., TELRIC⁹ methodology. Neither the Pre-Hearing Officer nor the Authority has determined which methodology should be used to set pay telephone rates. United will file its suggested pay telephone rate and cost support on September 15, 2000. Because a methodology has not been determined, United may file its rate and cost support as it deems appropriate and should not be forced to provide a cost study based on the methodology the Consumer Advocate and TPOA deem appropriate. Such a requirement is premature and unduly burdensome at this time. Moreover, the procedural schedule provides for additional discovery after the filing of proposed rates and cost support.

Although it is the opinion of the Pre-Hearing Officer that United should not be compelled to file a cost study prior to the September 15th due date, it is also the opinion of the Pre-Hearing Officer that United should provide all data necessary for the Consumer Advocate to develop an argument in opposition to United's position. For this reason, the Pre-Hearing Officer finds that United should be required to provide more detailed

⁸ Request number two provides: "Identify all differences in the study previously submitted in this docket by United Telephone-Southeast, Inc. and the revised study provided in response to Item 1." Request number three provides: "Provide the complete explanation for each difference identified in Item 2 and produce all information which supports and does not support the explanation." Request number seven provides:

If it is United Telephone-Southeast, Inc.'s position that the methodology used for determining the costs of unbundled network elements is inappropriate for use in determining the cost of payphone access lines, provide a detailed study identifying the cost of each network element that make up payphone lines, identify the source of all data used, and supply supporting workpapers that show the development of all factors and amounts.

⁹ TELRIC stands for Total Element Long-Run Incremental Cost.

responses to requests number four¹⁰ and five.¹¹ In its response to request number four, United provided part of the information but did not sufficiently explain why the remainder of the information was not available. As to request number five, United simply stated without any explanation that the information was not available. Such responses are insufficient. United should provide the actual data, reasonable approximations, or a detailed explanation of why actual data or reasonable approximations are not available.

Finally, as to the sixth request, the Pre-Hearing Officer finds that United provided an adequate responses to the request. Although United may not have gone to the detail desired by the Consumer Advocate, it adequately explained which methodology United believes to be superior and why it favors that particular methodology.

The final issue before the Pre-Hearing Officer is whether to modify the procedural schedule. The Consumer Advocate's motion does not explain why or how the procedural schedule should be modified. This is a very time sensitive docket and; therefore, it is important that the docket continue to move forward. Any alteration in the procedural schedule could delay this docket indefinitely. For these reasons, it is the conclusion of the Pre-Hearing Officer that the procedural schedule should not be modified.

¹⁰ Request number four provides:

For each month, January 1997 to present, identify by wire center:

- a. The number of payphone lines provided to non-affiliated payphone providers.
- b. The number of payphone lines provided to company owned payphones or payphone owned by an affiliate.
- c. The revenues collected from payphone line provided to non-affiliates; and
- d. The revenue collected from payphone lines provided to affiliates.

¹¹ Request number five provides:

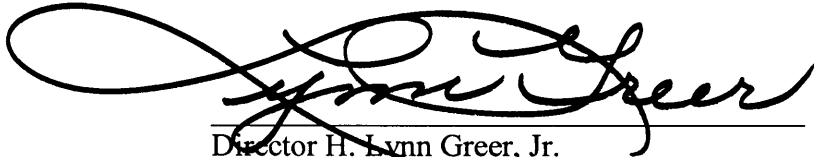
Identify the average loop length of:

- a. All access lines,
- b. business access lines,
- c. residential access lines,
- d. payphone access lines.

IT IS THEREFORE ORDERED THAT:

1. The *Motion to Compel and to Modify Scheduling Order* filed by the Consumer Advocate Division of the Office of the Attorney General and Reporter is granted in part and denied in part. United-Telephone Southeast, Inc. shall file appropriate responses to the Consumer Advocate's data requests number four and five as described herein on or before 2:00 p.m., Monday, September 18, 2000. Any further relief sought by the Consumer Advocate in its motion is denied.

2) Any party aggrieved by this Order may file a Petition for Reconsideration pursuant to Tenn. Code Ann. § 4-5-317 with the Tennessee Regulatory Authority within ten (15) days of the entry of this Order.



Director H. Lynn Greer, Jr.
Pre-Hearing Officer

ATTEST:



K. David Waddell, Executive Secretary